



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Husky Computers, Inc.

File: B-226665.2

Date: November 4, 1987

DIGEST

1. Agency reasonably found the awardee had graphics capability in its proposed data recorders, even though it did not have currently available software to run required graphics, since the solicitation only required that the recorders have the capability to run graphics.
2. Where a contract contains a fixed-price option for a customized enhanced product to be developed during the contract, but the solicitation did not specifically invite developmental products and competitors were not placed on notice that the agency ultimately wanted a customized product, any development effort should be the subject of separate competition before the option is exercised.

DECISION

Husky Computers, Inc., protests the award of a contract to Omnidata International, Inc., pursuant to request for proposals (RFP) No. R1-87-5, issued by the Forest Service, United States Department of Agriculture, Missoula, Montana, for 150 portable data recorders to be delivered within 45 days of award. We deny the protest.

Seven firms submitted proposals in response to the RFP by April 5, 1987, but only the proposals of Omnidata, Husky and Oregon Digital Systems, Inc., were found in the competitive range. Each of these offerors proposed two alternate recorders.

In its initial proposal, Omnidata proposed to supply its model 602 data recorder. As an alternate proposal, Omnidata submitted a proposed model 654 data recorder, which was to be an upgraded model of the Omnidata series 600 data recorder that would be custom designed during the contract to meet the Forest Service region's specific needs. The Forest Service was attracted to both the model 602 and the proposed model 654 in the initial evaluation but was concerned that none of the offerors' proposed recorders met

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all the government's long term requirements. Consequently, during discussions on May 29, 1987, the Forest Service advised all offerors that the 45-day delivery period would not be relaxed, but offerors could propose "enhancements" (software and/or hardware) to the proposed recorder if the enhancements were made by May 1, 1988. The Forest Service further advised that if a "change out" (trade-in) of the initially supplied recorder for an enhanced recorder were proposed, the best and final offer (BAFO) should itemize any allowed trade-in credit.

After discussions, BAFOs were submitted by June 11, 1987. Omnidata's model 602 proposal was the highest rated technically with the low price of \$242,700; Oregon's "HP-71" proposal was second rated technically with a price of \$374,250; and Husky's "Hunter" model proposal was third rated technically with a price of \$315,487.50.

The agency performed an evaluation of the proposed recorders and prices to account for such factors as maintenance costs, and the cost effect of the size and weight of the recorders on user mobility and of the speed and ability of the recorders' software. This evaluation widened the difference among the evaluated prices. The evaluated prices are: Omnidata's model 602--\$281,450; Oregon's HP-71--\$444,250; and Husky's Hunter model--\$555,787,50.

Only Omnidata responded in its BAFO to the Forest Service invitation during discussions to propose additional enhancements; Omnidata proposed its model 654 for an additional \$354,900 with a \$111,750 change out credit for the model 602's. The Forest Service concluded that the model 602 was the best proposal, price and other factors considered, and the model 654 was the best system "for the government in a long range commitment." Therefore, the Forest Service incorporated Omnidata's proposed model 654 option in the contract award.

Husky protests that its price was low and that the price evaluation adjustments of the Forest Service were not supported. However, Omnidata's model 602 on which the award was based was significantly lower-priced than Husky's proposed models. Furthermore, since the protested price adjustments did not affect the relative standing of the offerors, Husky was not prejudiced by these adjustments, even assuming the adjustments were faulty. Therefore, we need not consider this protest basis further. Cryogenic Consultants, Inc., B-225520, Mar. 4, 1987, 87-1 CPD ¶ 249 at 4.

Husky also protests that the Omnidata data recorder cannot comply with the mandatory RFP specification display and

software requirements within the required 45-day delivery period, since Omnidata's data recorder and its operating system cannot run or implement any graphics.

It is true the RFP display and software requirements clearly contemplate that the data recorders have graphic capability and that Omnidata's proposal states that its model 602 "does not offer graphics capability as called for in the solicitation." However, Omnidata states that it meant by this statement that its hardware did not have graphics capability but it would furnish this capability through software to be developed. The Forest Service found, and the record shows, that the Omnidata model 602 had this capability, since Omnidata's proposal explained that further software needed to be developed to run the graphics ultimately contemplated under the contract and other information in the proposal clearly indicates that the model 602 could make graphic displays. At the conference on this protest, the model 602's capability to make simple graphic displays was demonstrated.

Husky also states that Omnidata's model 602 is unacceptable, since it cannot currently do traverses and simple surveys to produce graphic images. However, the RFP specifications provide in pertinent part: "it is anticipated the Forest Service will do traverses and simple surveys as future programs become available." Thus, although the Omnidata model 602 did not have the current software to perform traverses and simple surveys, the RFP did not require this capability within the 45-day delivery period. The Forest Service found that Omnidata had the capability to ultimately provide any needed software.

Since there is no RFP requirement specifying a level of graphics capability in the recorders to be delivered within 45 days, Husky's protest on this point is without merit. Moreover, the Forest Service gave Husky additional credit in the technical evaluation because it had currently available graphics programs and Omnidata was not given such credit. Omnidata was selected for award, however, because it received a significantly higher overall technical rating than Husky because of other significant evaluated strengths, e.g., the size/weight of the recorder and the overall quality of the software.

Husky protests that Omnidata's data recorder is not acceptable because it does not have a standard "QWERTY" keyboard. However, the RFP states: "The normal entry arrangement used by the Forest Service is the standard QWERT keyboard layout: therefore this type of layout is preferable." (Emphasis supplied.) This RFP provision only states an evaluation preference, not a requirement. Indeed,

the record shows that Husky received more credit than Omnidata for "alpha keystrokes" criteria in the technical evaluation. Therefore, this protest basis has no merit.

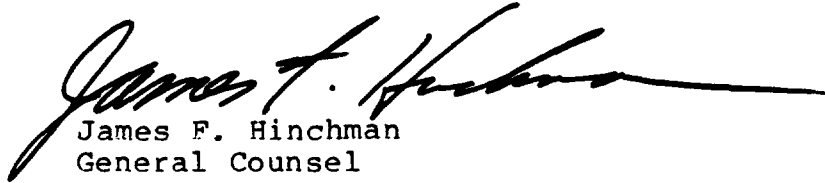
In its comments after the bid protest conference in this matter, Husky first raised a number of other issues concerning the evaluation of the Omnidata proposal, such as whether the Omnidata screen provides "maximum visibility." These protest bases concerning Omnidata's recorder, with which Husky has shown its familiarity, are untimely raised under our Bid Protest Regulations and will not be considered, since these contentions were raised more than 10 working days after the bases for protest should have been known. 4 C.F.R. § 21.2(a)(2) (1987); American Science and Engineering, Inc., B-225161.2, Mar. 5, 1987, 87-1 CPD ¶ 252.

Finally, Husky protests that Omnidata ultimately will develop a new product under this contract rather than delivering the product solicited. However, it appears that Husky would not have proposed any different model if it had been more clearly given the opportunity to propose enhancements to its basic data recorders and that the relative evaluated strengths and weaknesses in Omnidata's and Husky's data recorders would have remained the same so Husky is not prejudiced by the option for the model 654 contained in Omnidata's contract. See DataVault Corp., B-223937, B-223937.2, Nov. 20, 1986, 86-2 CPD ¶ 594, aff'd, B-223937.3, Jan. 20, 1987, 87-1 CPD ¶ 69.

In view of the foregoing, Husky's protest is denied.

Nevertheless, we are concerned about the method by which the Forest Service is acquiring the Omnidata model 654 that has yet to be developed. In this regard, even though the recorder is to be provided for a fixed price as an option under the contract, the record clearly shows that there are no clear parameters for the Omnidata model 654, e.g., it is not yet known what the model 654 will look like. The RFP did not specifically invite developmental products and the proposed future enhancements are said to be no part of the award selection. Moreover, we are concerned that the statement in the request for BAFOs that enhancements could be offered did not sufficiently alert the competitors that the Forest Service ultimately wanted a customized data recorder to fulfill its long term requirements. In this regard, in its comments on the protest, Oregon has stated that it would have submitted a different proposal on a

solicitation for a customized data recorder to be developed. Under the circumstances, by separate letter of today to the Secretary of Agriculture, we are recommending that before the option for the model 654 recorder is exercised, the development effort be the subject of a separate competition.



James F. Hinchman
General Counsel